Chong Tong Haw (as administrator of the estate of Chong Ket Kin, deceased) v Chong Chee Keong

HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NO BA-24NCVC-1390–10 OF 2019
FAIZAH JAMALUDIN J
8 DECEMBER 2020

Land law — Caveat — Application to remove private caveat — Private caveat entered on land by the defendant pursuant to s 323(1) of the NLC as director and shareholder of the company — Whether the company had caveatable interest over the land — Whether defendant/company was a person/body aggrieved by existence of caveat — Whether the plaintiff's application to remove the caveat disclosed a serious issue to be tried — Balance of convenience to maintain the status quo pending the disposal of the company's claim on the land — National Land Code ss 323(1), 327 & 329

This was the plaintiff's application to remove a private caveat lodged by the defendant on the land known as GM 520, Lot 7044, Mukim Tanjung Dua Belas, Daerah Kuala Langat, Negeri Selangor Darul Ehsan ('the land'). The plaintiff filed the present application as the administrator of the estate of his late father, Chong Ket Kin ('CKK'). CKK and his three brothers Chang Kok Soi ('CKS'), Cheong Kok Yong @ Ku Lon ('CKY') and Chong Yoon Min ('CYM') were registered as the owners of 1/4 share each of the land. Their shares on the land are undivided. The defendant then entered the private caveat on the land pursuant to s 323(1) of the National Land Code ('the NLC') as a director and shareholder of a company known as Sykt Union Wood Industries Sdn Bhd ('the company'). The company claimed to be the owner of the land under a trust between the CKK, CKS and CYM ('the three brothers'). It was the defendant's case that the three brothers held the land on trust for the company. The land was purchased in 1973 by CKY and the purchase price for the land was paid by Yew Lian Door Frame, a business owned by CKY and the three brothers. Yew Lian Door Frame changed its name to Sykt Union Wood Industries ('SUWI'). SUWI was later incorporated as a private limited company bearing the name Sykt Union Wood Industries Sdn Bhd ('the company') in 1976. On its incorporation, the company took over all the assets and liabilities of SUWI, including the land. CKY and the three brothers were the original shareholders of the company. The company was in the business of processing timber and making door and window frames. Its wood processing plant, factory buildings, kilns, machinery and equipment were located on the said land. The said land was registered in the brothers' individual names, with each holding 1/4 undivided share in the said land. During their lifetime, the three brothers have declared themselves to be holding 1/4 share each (total of

A 3/4 share) in the said land as trustees for the company. Of the four brothers, only CKY was still alive. The three brothers had since passed away. On CYM's death, his son Chong Yok Chuan, was appointed as the administrator of CYM's estate. On CKK's death, his son Chong Tong Haw, the plaintiff in this case and in the 2013 OS was appointed as the administrator of CKK's estate. On CKS' B death, his son Chang Yook Seen, was appointed administrator of CKS' estate. In 1993, the defendant, Chong Chee Keong, purchased 20.3% shares in the company and a few years later, his wife, Madam Ang Lay Hoon, purchased 8% shares in the company. The value of the land was included in the valuation of the company's shares for purposes of the sale of the shares to the defendant and C his wife. CKY and the administrators of the three brothers' respective estates have, since 1997, brought several suits and originating summons in relation to the land. Accordingly, in deciding on the plaintiff's application to remove the private caveat on the land, this court must first answer the following questions, namely: (a) does the company have a caveatable interest on the land; (b) does D the plaintiff's application to remove the caveat disclose a serious issue to be tried; and (c) where does the balance of convenience lie? Is it in favour of removing the caveat or allowing the caveat to remain on the register pending the disposal of the company's claim on the land?

E **Held**, dismissing the plaintiff's application with cost RM2,500 subject to allocatur fee:

(1) It was not disputed that the land is the company's only immovable asset and that its value exceeds 25% of the total assets of the company. It also F cannot be disputed that the High Court in three separate cases (the 1997 Suit, 2013 OS and 09 of 2019 OS) have found that the three brothers hold the land on trust for the company. Accordingly, pursuant to s 223 of the Companies Act 2016, the land was considered to be of a substantial value and a portion of the company's undertaking or property. The court G found that based on the evidence before this court and the findings of the High Court in the 1997 Suit, 2013 OS and 07 of 2019 OS, that the company was beneficially entitled to a claim under a trust with the three brothers affecting the land and a registrable interest in the land. Accordingly, the court found that the company has a caveatable interest H in the land (see paras 50 & 52–53).

(2) The court found that there was serious issues and questions that ought to be decided at trial. The question to be determined at trial was whether the directors' resolution has the effect of the company relinquishing its claim to the title and registrable interest in the land? Related to this question, I was another question of whether, as submitted by learned counsel for the plaintiff, the passing of the directors' resolution that the company has no claim over any interest in the land was a decision pertaining to the business or management of the company. Or was it a mala fide attempt by the directors to circumvent the express provisions of the CA 2016, which

was in pari materia with the same provision in the earlier Companies Act 1965, enacted by parliament to protect the company and the shareholders of the company from the disposal of a substantial portion of the company's property by its directors without the shareholders' knowledge and approval (see paras 56–57).

(3) The court agreed with Che Mohd Ruzima bin Ghazali J (as he then was) that the caveat on the land should be maintained until the dispute relating to the ownership of the land between the company and the registered owners of the land was resolved.The court found that the balance of convenience lies in the private caveat remaining on the land until the disposal of the 2020 Suit (see paras 61 & 63).

[Bahasa Malaysia summary

Ini adalah permohonan plaintif untuk membatalkan kaveat persendirian yang dimasukkan oleh defendan atas tanah yang dikenali sebagai GM 520, Lot 7044, Mukim Tanjung Dua Belas, Daerah Kuala Langat, Negeri Selangor Darul Ehsan ('tanah tersebut'). Plaintif memfailkan permohonan semasa sebagai pentadbir harta pusaka arwah bapanya, Chong Ket Kin ('CKK'). CKK dan tiga adik beradiknya Chang Kok Soi ('CKS'), Cheong Kok Yong @ Ku Lon ('CKY') dan Chong Yoon Min ('CYM') telah didaftarkan sebagai pemilik bagi 1/4 bahagian tanah tersebut. Bahagian mereka pada tanah tidak dipecahkan. Defendan kemudian memasukkan kaveat persendirian atas tanah tersebut menurut s 323(1) Kanun Tanah Negara ('KTN') sebagai pengarah dan pemegang saham syarikat yang dikenali sebagai Sykt Union Wood Industries Sdn Bhd ('syarikat tersebut'). Syarikat tersebut mengakui sebagai pemilik tanah dipegang secara amanah antara CKK, CKS dan CYM ('tiga bersaudara'). Ianya adalah kes defendan bahawa ketiga-tiga bersaudara memegang amanah bagi syarikat tersebut. Tanah tersebut telah dibeli pada tahun 1973 oleh CKY dan harga belian bagi tanah tersebut telah dibayar oleh Yew Lian Door Frame, sebuah perniagaan yang dimiliki oleh CKY dan tiga bersaudara tersebut. Yew Lian Door Frame menukar namanya menjadi Sykt Union Wood Industries ('SUWI'). SUWI kemudian diperbadankan sebagai syarikat sendirian berhad dengan nama Sykt Union Wood Industries Sdn Bhd ('syarikat tersebut') pada tahun 1976. Semasa penubuhannya, syarikat tersebut mengambil alih kesemua aset dan liabiliti SUWI, termasuklah tanah tersebut. CKY dan tiga bersaudara tersebut adalah pemegang saham asal syarikat. Syarikat tersebut menjalankan perniagaan pemprosesan kayu balak dan pembuatan bingkai pintu dan tingkap. Kilang pemprosesan kayu, bangunan kilang, tanur, jentera dan peralatannya terletak di atas tanah tersebut. Tanah tersebut didaftarkan atas nama bersaudara tersebut secara berasingan, dengan masing-masing memegang 1/4 bahagian yang tidak dipecahkan pada tanah tersebut. Sepanjang hidup mereka, tiga bersaudara tersebut menyatakan bahawa mereka masing-masing memegang 1/4 saham (keseluruhan 3/4 saham) di tanah tersebut sebagai pemegang amanah bagi syarikat. Dari empat bersaudara

tersebut, hanya CKY yang masih hidup. Ketiga-tiga bersaudara telah meninggal dunia. Semasa kematian CYM, anaknya Chong Yok Chuan, dilantik sebagai pentadbir harta pusaka CYM. Semasa kematian CKK, anaknya, Chong Tong Haw, plaintif dalam kes semasa dan dalam OS 2013 telah dilantik sebagai pentadbir harta pusaka CKK. Setelah kematian CKS, anaknya Chang Yook Seen, dilantik sebagai pentadbir harta pusaka CKS. Pada tahun 1993, defendan, Chong Chee Keong, membeli 20.3% saham di syarikat tersebut dan beberapa tahun kemudian, isterinya, Puan Ang Lay Hoon, membeli 8% saham di syarikat tersebut. Nilai tanah tersebut termasuk dalam penilaian saham syarikat untuk tujuan penjualan saham tersebut kepada defendan dan isterinya. Sejak tahun 1997, CKY dan para pentadbir dari ketiga-tiga saudara lelaki tersebut telah mengemukakan beberapa tindakan dan saman pemula berkaitan dengan tanah tersebut. Lanjutan itu, dalam memutuskan permohonan plaintif untuk membatalkan kaveat persendirian atas tanah tersebut, mahkamah ini harus terlebih dahulu menjawab persoalan berikut, iaitu: (a) sama ada syarikat mempunyai kepentingan kaveat atas tanah; (b) sama ada permohonan plaintif untuk membatalkan kaveat tersebut mendedahkan isu serius yang harus dibicarakan; dan (c) di mana terletaknya imbangan kemudahan? Adakah ia memihak kepada pembatalan kaveat atau membenarkan kaveat tersebut terus didaftarkan sementara menunggu pelupusan tuntutan syarikat tersebut ke atas tanah?

Diputuskan, menolak permohonan plaintif dengan kos RM2,500 tertakluk kepada fi alokatur:

(1) Ia tidak dipertikaikan bahawa tanah tersebut adalah satu-satunya aset tidak alih syarikat dan nilainya melebihi 25% dari jumlah aset syarikat. Ia juga tidak dapat dipertikaikan bahawa Mahkamah Tinggi dalam tiga kes yang berasingan (Guaman 1997, OS 2013 dan OS 09 Tahun 2019) telah mendapati bahawa ketiga-tiga bersaudara tersebut memegang tanah atas amanah bagi syarikat tersebut. Lanjutan itu, berdasarkan s 223 Akta Syarikat 2016, tanah tersebut dikira bernilai besar dan sebahagian daripada akujanji atau harta syarikat. Mahkamah mendapati bahawa berdasarkan keterangan di hadapan mahkamah ini dan dapatan Mahkamah Tinggi dalam Tindakan 1997, OS 2013 dan OS 07 Tahun 2019, syarikat secara benefisial berhak mendapat tuntutan di bawah amanah dengan ketiga-tiga bersaudara terhadap tanah dan kepentingan yang boleh didaftarkan atas tanah tersebut. Oleh itu, mahkamah mendapati bahawa syarikat tersebut mempunyai kepentingan kaveat atas tanah tersebut (lihat perenggan 50 & 52–53).

(2) Mahkamah mendapati terdapat isu serius dan persoalan yang harus diputuskan pada perbicaraan. Persoalan yang harus ditentukan semasa perbicaraan adalah sama ada resolusi pengarah mempunyai kesan terhadap syarikat yang melepaskan tuntutannya atas hak dan kepentingan yang dapat didaftarkan atas tanah tersebut? Berkaitan

dengan persoalan ini, adalah persoalan lain sama ada, seperti yang dihujahkan oleh peguamcara yang bijaksana untuk plaintif, kelulusan resolusi pengarah bahawa syarikat tidak memiliki tuntutan atas kepentingan atas tanah itu adalah keputusan yang berkaitan dengan perniagaan atau pengurusan syarikat. Atau sama ada ia percubaan berniat jahat oleh pengarah untuk menghindari peruntukan AS 2016, yang mana adalah pari materia dengan peruntukan yang sama dalam Akta Syarikat 1965 sebelumnya, yang digubal oleh parlimen untuk melindungi syarikat dan pemegang saham syarikat dari pelupusan sebahagian besar harta syarikat oleh pengarahnya tanpa pengetahuan dan persetujuan pemegang saham (lihat perenggan 56–57).

(3) Mahkamah bersetuju dengan Che Mohd Ruzima bin Ghazali J (ketika itu) bahawa kaveat atas tanah tersebut harus dikekalkan sehingga pertikaian berkaitan dengan hak milik tanah antara syarikat dan pemilik tanah yang berdaftar tersebut diselesaikan. Mahkamah mendapati bahawa imbangan kemudahan terletak pada kaveat persendirian yang masih ada di tanah sehingga pelupusan tuntuan 2020 (lihat perenggan 61 & 63).]

Cases referred to

Eng Mee Yong & Ors v V Letchumanan [1979] 2 MLJ 212; [1979] 1 LNS 18, PC (refd)

Kho Ah Soon v Duniaga Sdn Bhd [1996] 2 MLJ 181, FC (refd)

Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 1 MLJ 719; [1995] 3 CLJ 520, CA (refd)

Ng Hee Thong & Anor v Public Bank Bhd [1995] 1 MLJ 281; [1995] 1 CLJ 609, CA (refd)

Score Options Sdn Bhd v Mexaland Development Sdn Bhd [2012] 6 MLJ 475; [2012] 7 CLJ 802, FC (folld)

Tengku Dato' Ibrahim Petra bin Tengku Indra Petra v Petra Perdana Bhd and another appeal [2018] 2 MLJ 177, FC (refd)

Legislation referred to

Companies Act 1965 (repealed by the Companies Act 2016)

Companies Act 2016 ss 223, 223(3), 223(5)

National Land Code ss 323(1), 323(1)(a), (1)(b), 327, 327(1), 340(1), (2)

CM Loo (Syazatul Akhyar with him) (Mohd Latip & Assoc) for the plaintiff.

Jeramal @ Ganesan s/o Muthu (J Ganesan Tajul Anuar & Co) for the defendant.

Faizah Jamaludin J:

APPLICATION

[1] This the plaintiff's application to remove a private caveat lodged by the defendant on the land known as GM 520, Lot 7044, Mukim Tanjung Dua Belas, Daerah Kuala Langat, Negeri Selangor Darul Ehsan ('the land').

[2] The plaintiff filed this application as the administrator of the estate of his late father, Chong Ket Kin ('CKK'). CKK and his three brothers Chang Kok Soi ('CKS'), Cheong Kok Yong @ Ku Lon ('CKY') and Chong Yoon Min ('CYM') are registered as the owners of 1/4 share each of the land. Their shares on the land are undivided.

[3] The defendant had entered the private caveat on the land pursuant to s 323(1) of the National Land Code ('the NLC') as a director and shareholder of a company known as Sykt Union Wood Industries Sdn Bhd ('the company'). The company claims to be the owner of the land under a trust between the CKK, CKS and CYM (collectively referred to in this judgment as the 'three brothers'). It is the defendant's case that the three brothers hold the land on trust for the company.

[4] At the conclusion of the hearing of the plaintiff's application, I found that the company has a caveatable interest in the land, that there are serious issues to be tried and that the balance of convenience lies in allowing the status quo to remain ie the private caveat remains on the land until the disposal of the defendant's civil suit in Guaman No BA-22NCVC-22–01 Tahun 2020. For these reasons, the plaintiff's application to remove the private caveat was dismissed.

[5] The full grounds for my decision are set out in this judgment.

BACKGROUND FACTS

[6] The land was purchased in 1973 by CKY and the purchase price for the land was paid by Yew Lian Door Frame, a business owned by CKY and the three brothers. Yew Lian Door Frame changed its name to Sykt Union Wood Industries ('SUWI'). SUWI was later incorporated as a private limited company bearing the name Sykt Union Wood Industries Sdn Bhd ('the company') in 1976. On its incorporation, the company took over all the assets and liabilities of SUWI, including the land. CKY and the three brothers were the original shareholders of the company. The company is in the business of

processing timber and making door and window frames. Its wood processing plant, factory buildings, kilns, machinery and equipment are located on the said land.

[7] The said land was registered in the brothers' individual names, with each holding 1/4 undivided share in the said land. During their lifetime, the three brothers have declared themselves to be holding 1/4 share each (total of 3/4 share) in the said land as trustees for the company.

[8] Of the four brothers, only CKY is still alive. The three brothers have since passed away. On CYM's death, his son Chong Yok Chuan, was appointed as the administrator of CYM's estate. On CKK's death, his son Chong Tong Haw, the plaintiff in this case and in the 2013 OS (as defined below) was appointed as the administrator of CKK's estate. On CKS' death, his son Chang Yook Seen, was appointed administrator of CKS' estate.

[9] In 1993, the defendant, Chong Chee Keong, purchased 20.3% shares in the company and a few years later, his wife, Madam Ang Lay Hoon, purchased 8% shares in the company. The value of the land was included in the valuation of the company's shares for purposes of the sale of the shares to the defendant and his wife. Although the defendant's surname is Chong, he is not related to the four brothers or the plaintiff and his siblings.

[10] CKY and the administrators of the three brothers' respective estates have, since 1997, brought several suits and originating summons in relation to the land. Below is a list of the litigation that were referred to by the plaintiff and the defendant in their respective affidavits in this application:

	Writ/OS No		Plaintiff(s)	Defendant(s)
1.	MT2–22–417–1997 ('1997 Suit')		Chong Yok Chuan (as administrator of the estate of CYM)	The company
2.	22–754–2000	Heard together ('2000/2005 suits')	CKY	The company
3.	22–1105–2005		The company	CKY

4.	24–623–04 of 2013 ('2013 OS')		Chong Tong Haw (as administrator of the estate of CKK)	1) CKY 2) Chang Yook Seen (as administrator of the estate of CKS) 3) Chong Yok Chuan (as administrator of the estate of CYM)
5.	BA-24NCVC-873–07 of 2019 ('07 of 2019 OS')		Chang Yook Seen (as administrator of the estate of CKS)	Chong Chee Keong
6.	BA-24NCVC-1365–09 of 2019 ('09 of 2019 OS')		CKY	Chong Chee Keong
7.	BA-24NCVC-1390–10 of 2019 ('10 of 2019 OS') — this instant action		Chong Tong Haw (as administrator of the estate of CKK)	Chong Chee Keong

1997 Suit

[11] After CYM's death, his son Chong Yok Chuan was appointed as the administrator of CYM's estate. Chong Yok Chuan brought the 1997 Suit against the company, for damages to be assessed, including outstanding rental, for the company's use and occupation of the 1/4 share of the said land, which Chong Yok Chuan says belongs to CYM.

[12] In the 1997 Suit, CKK and CKS (in an affidavit they both affirmed on 29 November 2002) averred that the company had paid for the purchase of the land and that all the four brothers were merely trustees. Paragraph 13(v) and (vi) of their affidavit is reproduced below:

> (v) Tanah tersebut dibayar oleh Syarikat yang dahulunya dikenali sebagai Union Wood Industries dimana keempat-empat tuan punya tanah hanyalah 'Pemegang Amanah';

(v) Tanah tersebut telah digadaikan kepada pihak bank. Syarikat Defendan [Syarikat Union Wood Industries Sdn Bhd] membayar ansuran hutang dan bunga bagi tanah tersebut kepada pihak bank dalam anggaran RM7,000.00 sebulan.

[13] This court in the 1997 Suit found that CYM was not the legal and beneficial owner of the 1/4 share in the said land but that he held the 1/4 share in the said land as a trustee of the company. Her Ladyship Mariana Yahya JC (as she then was) at pp 34 and 35 of her grounds of judgment held:

Berdasarkan keterangan dan ekshibit-ekshibit yang ada di hadapan saya, *saya memutuskan bahawa Chong Yoo Min, simati hanyalah pemilik berdaftar yang memegang secara amanah untuk defendan (Syarikat Union Wood Industries Sdn Bhd) terhadap hartanah berkenaan*. Plaintif juga tidak berhak atas sebarang sewaan atas hartanah tersebut. Ianya bukan sahaja tidak wujud pada awalnya lagi malah gagal dibuktikan. (Emphasis added.)

[14] The High Court's decision in the 1997 Suit was upheld by the Court of Appeal on 11 August 2010.

2013 OS

[15] CKK died on 13 April 2012. CKK's son, Chong Tong Haw — the plaintiff in this instant case, was appointed as the administrator of the CKK's estate. The plaintiff brought the 2013 OS against his uncle CKY and his cousins Chang Yook Seen (as the administrator of the estate of CKS) and Chong Yok Chuan (as the administrator of the estate of CYM).

[16] In the 2013 OS, the plaintiff sought an order of court to terminate the joint ownership of the land by CKK, CKY, CKS and CYM and that the defendants execute all the documents for the subdivision of the land; or in the alternative for an order for sale of the land and that the proceeds of the sale be divided into four and paid to each of the plaintiff and the defendants in the 2013 OS. In the 2013 OS, the second defendant, Chang Yook Seen (as the administrator of the estate of CKS) — in para 9 of his affidavit in reply averred:

Sebagai Jawapan kepada Perenggan 10 dan 13 Afidavit Jawapan Permohonan, saya menyatakan bahawa Syarikat Union Wood Industries Sdn Bhd ('SUWISB') tidak perlu memulakan apa-apa tindakan, *SUWISB yang menggunakan tanah berkenaan sebagai tanah kepunyaan Syarikat, dan segala tindakan SUWISB, semenjak 1974 adalah atas dasas [sic] bahawa tanah berkenaan adalah tanah kepunyaan syarikat*, Semenjak tahun 1974 sehingga tahun 2013, SUWISB, menggunakan tanah ini sebagai tanah Syarikat. Ketiga [sic] kehidupan Chong Ket Kin, iaitu bapa Plaintiff mendiang Chong Kit Kin, selama 40 tahun tidak membangkitkan perkara ini; kerana beliau tahu, keadaan ini. Plaintiff yang baru menimbul soal ini, kerana, beliau tidak tahu latarbelakang pembelian, pemakaian dan persefahaman semua pihak, mengenai tanah berkenaan dan hak Syarikat atasnya. Pihak Plaintif yang

ingin mencabar satu keadaan dan satu kedudukan bagi itu nyata, patut memulakan tindakan. (Emphasis added.)

[17] By an order dated 21 January 2014, His Lordship Ahmadi Asnawi J (as he then was) dismissed the plaintiff's application in the 2013 OS. In p 10 of his grounds of judgment dated 4 July 2014, His Lordship held:

> In the light of all the above, *I have no hesitation to find that the four registered co-proprietors of the said land were not the owners of the said land but were holding the same as trustee for SUWISB*. As such they or their representatives have no business to partition and appropriate the said to themselves. Additionally if prayers (a), (b) and (c) of the originating summons are allowed it would go against the High Court ruling in MT1–22–417–1999 and affirmed by the Court of Appeal, which held and declared that the said land belongs to SUWISB and that the third defendant is holding 1/4 share of the said land as a trustee of SUWISB. Again, if allowed it would deprive the rights and interests of SUWISB who was not made a party in this proceeding. (Emphasis added.)

[18] The High Court's decision in 2013 OS was upheld by the Court of Appeal.

07 of 2019 OS

[19] The O7 of 2019 OS was filed by the CKS's son, Chang Yook Seen as the administrator of CKS's estate, a few months before the plaintiff filed his originating summons in this instant action, to remove the defendant's caveat from the land.

[20] His Lordship Che Mohd Ruzima bin Ghazali J (as he then was) on 2 October 2019 dismissed Chang Yook Seen's application. In his grounds of judgment issued on 12 December 2019, His Lordship found that the fact that defendant is a shareholder and director of the company and that the late CKS, Chang Yook Seen and Chang Yook Leong had admitted that the land belongs to the company were not disputed. Accordingly, based on the Court of Appeal's decision in *Ng Hee Thong & Anor v Public Bank Bhd* [1995] 1 MLJ 281; [1995] 1 CLJ 609, these facts are deemed admitted.

[21] As mentioned above, the late CKK and together with his brother, the late CKS, in an affidavit they both affirmed in the 1997 Suit, had averred that the company had paid for the purchase of the land and that all the four brothers were merely trustees. Chang Yook Seen himself as the second defendant in 2013 OS, had affirmed an affidavit that the land was owned the company and that his late father CKS was holding his 1/4 share in the land as trustee for the company. His Lordship Ahmadi Asnawi J (as he then was) in p 10 of his grounds of judgment in the 2013 OS said as follows:

Meanwhile the second defendant (Chang Yook Seen) in his affidavit in reply, Lampiran 8 and Lampiran 10, agrees that as an administrator of the estate of his late father, Chang Kok Soi (one of the registered co-proprietors of the said land), the 1/4 share of the said land registered under his father's name belongs to SUWISB ('the company') and that he is holding the said 1/4 share as a trustee for SUWISB.

[22] His Lordship Che Mohd Ruzima bin Ghazali J (as he then was) found in the 07 of 2019 OS that the defendant as a director and shareholder of the company has the right to enter the private caveat on the company's behalf as the party who is the beneficial owner or the party with a registrable interest on the land. His Lordship held that the private caveat on the land must be maintained until the dispute as regards the ownership of the land between the company and the registered owners of the land is resolved.

[23] Chang Yook Seen has appealed the High Court's decision in the 07 of 2019 OS, and his appeal is pending hearing before the Court of Appeal.

LAW ON REMOVAL OF PRIVATE CAVEATS

[24] The law on the removal of private caveats is well settled. Any person or body who is aggrieved by the existence of a private caveat on a land may apply at any time to court for an order for the removal of the caveat under s 327 of the NLC, which states:

327 Removal of private caveat by the court

(1) Any person or body aggrieved by the existence of a private caveat may at any time apply to the Court for an order for its removal, and the Court (acting, if the circumstances so require, ex parte) may make such order on the application as it may think just.

[25] The prerequisite for any application for the removal of a private caveat under s 327(1) of the NLC is that the application must be made by a person or a body 'aggrieved' by the existence of the private caveat.

[26] The exception to this requirement is where the applicant is the caveatee ie, the registered owner of the land. The Privy Council in *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212; [1979] 1 LNS 18 held that where the applicant for the removal of caveat under s 327 is the caveatee, the applicant can rely upon his registered title as prima facie evidence of his unfettered right to deal with the land as he pleases. The caveatee does not have to prove that he is a 'person or body aggrieved' by the existence of the private caveat.

[27] Upon an application by a person aggrieved or a caveatee for the removal of a private caveat, the onus is on the caveator to satisfy the court that there are

sufficient grounds in fact and law for the caveat to continue remaining on the land. Lord Diplock, delivering the judgment of the board of the Privy Council in *Eng Mee Yong* explained at p 215 of [1979] 2 MLJ 212; [1979] 1 LNS 18,

> In the former case the caveatee can rely upon his registered title as prima facie evidence of his unfettered right to deal with the land as he pleases; it is for the caveator to satisfy the court that there are sufficient grounds in fact and law for continuing in force a caveat which prevents him from doing so. So where, as in the instant case, the only parties to an application under s 327 are caveatee and caveator there is no difference between what the caveator must establish to obtain an extension of the caveat under s 326 and what he must establish to defeat the caveatee's application for removal of the caveat under s 327.

[28] Lord Diplock went on to explain the nature of the onus of the caveator in an application by the caveatee under s 327 of the NLC for the removal of a caveat as below:

> This is the nature of the onus that lies upon the caveator in an application by the caveatee under section 327 for removal of a caveat: he must first satisfy the court that on the evidence presented to it his claim to an interest in the property does raise a serious question to be tried; and, having done so, he must go on to show that on the balance of convenience it would be better to maintain the *status quo* until the trial of the action, by preventing the caveatee from disposing of his land to some third party.

[29] Hence, in this instant case, the onus is on the defendant to satisfy this court that the company, on whose behalf he had entered the caveat on the land for, has a caveatable interest on the land. Once the defendant has shown: (a) that the company has a caveatable interest in the land, he must then show; (b) the plaintiff's application to remove the caveat discloses a serious issue to be tried; and (c) once the defendant has successfully shown (a) and (b), he must then show this court that on a balance of convenience it would be better to maintain the status quo pending the disposal of the company's claim on the land.

ANALYSIS AND FINDINGS OF THIS COURT

[30] Accordingly, based on these legal principles, in deciding on the plaintiff's application to remove the private caveat on the land, this court must first answer the following questions, namely:

(a) does the company have a caveatable interest on the land?

(b) does the plaintiff's application to remove the caveat disclose a serious issue to be tried? and

(c) where does the balance of convenience lie? Is it in favour of removing the caveat or allowing the caveat to remain on the register pending the disposal of the company's claim on the land?

Does the company have a caveatable interest on the land?

[31] Under s 323(1)(b) of the NLC, a private caveat may be entered on a land by any person or body claiming to be beneficially entitled under any trust affecting any such land or interest. Section 323(1) of the NLC reads:

> 323 Applications for entry of private caveats
>
> (1) The persons and bodies at whose instance a private caveat may be entered are:
>
> (a) any person or body claiming title to, or any registrable interest in, any alienated land or undivided share in any alienated land or any right to such title or interest;
>
> (b) any person or body claiming to be beneficially entitled under any trust affecting any such land or interest; and
>
> (c) the guardian or next friend of any minor claiming to be entitled as mentioned in paragraph (b).

[32] What is a 'caveatable interest'? In the Court of Appeal's judgment in case of *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719; [1995] 3 CLJ 520, Gopal Sri Ram JCA (as he then was) discussed at length what is meant by 'caveatable interest' as distinguished from other interest in land in the context of para (a) of s 323(1) of the NLC, where he said:

> Caveatable Interest
>
> To paraphrase s 323(1)(a) of the Code, a private caveat may be entered at the instance of any person or body who claims either:
>
> (1) the title to land; or
>
> (2) any registrable interest in Land.
>
> The parameters of caveatability under s 323(1)(a) are therefore circumscribed by these words: 'title' and 'registrable interest'. It is only one who makes a claim to either of these in land may enter a private caveat.
>
> Although the words 'title' and 'registrable interest' are not defined by the Code, their meaning may be gathered from the scheme of the Code and from the indefeasibility provision, namely, s 340(1). The latter points to a bifurcation between title (the equivalent of the English fee simple) and registrable interests, that is, leases, charges and easements.
>
> In my judgment, the position that obtains under the Code, so far as is relevant to the present appeal, may be stated in the following way. The Code creates three categories of interests in land. They are as follows.
>
> *Category 1*: *Registrable interests in land*.

Only certain interests are capable of registration. Within this are two subcategories, namely:

(a) Registered title. This may be in perpetuity or for a term of years. It pertains to ownership of land. The 'owner' is termed by the Code as a 'registered proprietor',

(b) Registrable interests falling short of ownership. These are leases charges and easements. Registration carries with it a bundle of rights, which includes, subject to any restriction imposed by the alienating authority, the right to effect a transfer of the particular registered interest. The Code, in s 340(1), confers indefeasibility upon registered title and interests in land. Section 340(2) creates exceptions which, if established, may operate to defeat such registered title or interest;

Category 2: *Interests that are incapable of registration*.

These include tenancies exempt from registration, which may be protected by means of an endorsement upon the register document of title;

Category 3: *Caveatable interests*.

These are unregistered interests which are capable of protection by the entry of a private caveat. In the context of s 323(1)(a), it is only a claim to the interests falling under category 1(a) and (b) above that may be protected by the entry of a private caveat. Cases falling under category (2) are not caveatable interests. A private caveat cannot, therefore, be entered by one who claims such an interest. Protection for such interests must be secured in the manner prescribed by the Code. I fear that any other construction upon s 323(1)(a), especially one that places a meaning wider than that I subscribe to, may result in judicial disobedience to the will of Parliament: and that in my view should be avoided at all cost.

[33] In this instant case, the company claims a caveatable interest based on para (b) of s 323(1) of the NLC. In *Luggage Distributors*, Gopal Sri Ram JCA (as he then was) only discussed 'caveatable interest' in the context of para (a) of s 323(1) of the NLC. His Lordship did not discuss 'caveatable interest' in the context of para (b) of s 323(1) of the NLC, namely where a person or body claiming to be beneficially entitled under any trust affecting the land or interest in the land.

[34] In my opinion, it is evident that from the plain reading paras (a) and (b) of s 323(1) that the 'interest' in para (b) of s 323(1) is a 'registrable interest'. Therefore, in determining whether the company has a 'caveatable interest' in the land, this court must first decide whether the company indeed has a claim under a trust affecting the land or a 'registrable interest' in the land.

[35] What is a 'registrable interest' in land? In *Score Options Sdn Bhd v Mexaland Development Sdn Bhd* [2012] 6 MLJ 475; [2012] 7 CLJ 802, Arifin Zakaria CJ delivering the decision of the Federal Court held that 'To be caveatable, the interest must be an interest in the land and that interest must be

capable of registration. In short, it must represent a transaction that can ultimately lead to its registration on the register'. His Lordship held at para 35 of the judgment that the parties who are entitled to lodge a private caveat on any land 'are those who may effect dealings in the particular interests in the land. Those parties may either have a claim to the title to the land or a claim to a registrable interest in the land or a claim to any right to such title or registrable interest'.

[36] The Federal Court had made the following observation in *Score Options* as regards caveats:

> [25] A caveat is a creature of statute namely, the NLC and hence it can only be lodged by a claimant who has a caveatable interest under the NLC. The purpose of a caveat is to protect an interest in a land, or a right to an interest in that land (see *Yeong Ah Chee v Lee Chong Hai & Anor and other appeals* [1994] 2 MLJ 614; [1994] 3 CLJ 20 at p 624) and to preserve the status quo of the land pending the enforcement of such interest or right (see *Registrar of Titles, Johore v Temenggong Securities Ltd* [1976] 2 MLJ 44; [1976] 1 LNS 135 at p 46).

[37] Thus, applying these legal principles to this instant case, in order for the company to have a caveatable interest, it must show that it is beneficially entitled pursuant to the trust between it and the three brothers, to a claim to the title to the land or a 'registrable interest' in the land ie, an interest in the land that is capable of registration. As held by the Court of Appeal in *Luggage Distributors*, 'registrable interests in land' are divided into two subcategories, namely: (a) registered title; and (b) registrable interests falling short of ownership ie, leases, charges and easements.

[38] In this case the company claims title to the land. The three brothers, together with another brother CKY, are registered as owners of the land. As stated by the defendant in his Borang 19B and in his affidavits filed in this application, the three brothers are holding the land as trustees for the company. The company's claim is supported by the fact that the High Court in three separate cases, namely the 1997 Suit, the 2013 OS and the 07 of 2019 OS, have found that the three brothers are holding their 1/4 share each in the land on trust for the company.

[39] Against these facts is the plaintiff's averment that an order of the Court of Appeal dated 2 April 2014 (exhibited as 'CTH5' in his affidavit in support) clearly shows that his father CKK and three inviduals are the lawful registered owner of the said land. The plaintiff's averment is reproduced below:

A

9. Tambahan pula, terdapat satu Perintah Mahkamah yang telah diberikan oleh Mahkamah Rayuan Malaysia Putrajaya yang bertarikh 02 April 2014 dimana di dalam Perintah tersebut jelas menunjukkan bahawa Simati dan tiga (3) lagi individu seperti yang telah disebutkan diatas adalah merupakan Pemilik Berdaftar yang sah terhadap hartanah tersebut.

B

Bersama-sama ini dilampirkan sesalinan Perintah bertarikh 02 April 2014 tersebut dan ditandakan sebagai **Ekshibit "CTH-5".**

C

[40] The Court of Appeal's order dated 2 April 2014 exhibited in exh 'CTH5' of the plaintiff's affidavit in support is reproduced below.

D

DALAM MAHKAMAH RAYUAN MALAYSIA DI PUTRAJAYA
(BIDANGKUASA RAYUAN)
RAYUAN SIVIL NO. B -02-1689-97/2002

ANTARA

CHONG KOK YONG @ KU LON ...PERAYU
[No. K/P: 350918-10-5069]

DAN

SYARIKAT UNION WOOD INDUSTRIES SDN BHD ... RESPONDEN
[No. Syarikat: 28183-A]

E

[Dalam Mahkamah Tinggi Malaya Di Shah Alam
Dalam Negeri Selangor Darul Ehsan, Malaysia
Guaman Sivil No.22-754-2000

Antara

Chong Kok Yong @ Ku Lon ...Plaintif

Dan

F

Syarikat Union Wood Industries Sdn Bhd ... Defendan

Didengar bersama dengan
Guaman Sivil No. 22-1106-2005

Antara

Syarikat Union Wood Industries Sdn Bhd ... Plaintif

Dan

G

Chong Kok Yong @ Ku Lon ...Defendan

diputuskan oleh Yang Arif Hakim Dato' Tengku Maimun Binti Tuan Mat, Hakim Mahkamah Tinggi Shah Alam pada 19haribulan Jun 2012)

KORAM:
ABDUL WAHAB BIN PATAIL, HMR
BALIA YUSOF BIN WAHI, HMR
ABANG ISKANDAR BIN ABANG HASHIM, HMR

H

PADA 02 APRIL 2014 DALAM MAHKAMAH TERBUKA

PERINTAH

RAYUAN INI ditetapkan untuk pendengaran pada hari ini dalam kehadiran K. Kandiah dan M. Indrani, peguam bagi pihak Perayu dan M. J.

I

Ganesan dan Dinesh Athinarayanan peguam bagi pihak Responden **DAN SETELAH MEMBACA** Rekod Rayuan yang kesemuanya difailkan di sini **DAN SETELAH MENDENGAR** hujahan peguam-peguam **MAKA ADALAH DENGAN SEBULAT SUARA DIPERINTAHKAN** bahawa:-

(a) Rayuan Perayu dibenarkan sebahagian iaitu Responden membayar 25% daripada amaun sewa RM7200.00 sebulan bersama faedah 4% setahun dari 14.11.2000 (iaitu tarikh pemfailan Writ) sehingga tarikh Perintah ini;

(b) Responden membayar kos sebanyak RM5,000.00 (Ringgit Malaysia Lima Ribu sahaja) kepada Perayu;.

(c) Deposit Rayuan dikembalikan kepada Perayu.

DIBERI di bawah tandatangan saya dan Meterai Mahkamah pada 2 April 2014

ZULKIFLI BIN ABDULLAH
Timbalan Pendaftar
Mahkamah Rayuan Malaysia
Putrajaya

TIMBALAN PENDAFTAR
MAHKAMAH RAYUAN MALAYSIA
PUTRAJAYA

[41] Reading the Court of Appeal's order, it is clear that their Lordships had allowed part of the appellant's ('CKY') appeal against the decision of Her Ladyship Tengku Maimun Tuan Mat J (now CJ) in the 2000/2005 suits and ordered that the company pay CKY 25% of the rental amount in the sum of RM7,200 per month with interest at the rate of 4%pa from 14 November 2000 until the date of the Court of Appeal's order, together with costs of RM5,000.

[42] I am unable to find anywhere in the Court of Appeal's order dated 2 April 2014 'jelas menunjukkan' (clearly shows) that CKK and three other individuals are the lawful registered owner of the said land as averred by the plaintiff.

[43] Additionally, after the defendant had filed his affidavit in reply, the plaintiff on 12 February 2020 filed a supplementary affidavit ('afidavit tambahan plaintif') (encl 8), affirmed on 12 February 2020, stating that board of directors of the company had held a directors meeting on 4 September 2019 and had made the following resolution as shown in cl 9.3 of the minutes of meeting:

LAND HELD UNDER GM 520, LOT 7044, MUKIM TANJUNG DUABELAS, DAERAH KUALA LANGAT

THAT the company has no claim over any interest in the land under GM 520, Lot 7044, Mukim Tanjung Dua Belas, Daerah Kuala Langat measuring an area of approximately 1.764 Hectare from any of the 4 co-proprietor, and that the Director's Resolution dated 10 December 2018 is hereby declared invalid and revoked immediate effect.

[44] The minutes of the company's board of directors meeting exhibited in exh 'CTH1' of the plaintiff's supplementary affidavit shows that the directors who attend the meeting are the plaintiff (as chairman), Chang Yook Leong and Madam Yap Moi. The minutes of meeting state 'absent with apology' are the defendant and his wife, Madam Ang Lay Hoon, who are both directors of the company.

[45] The effect of the directors' resolution of 4 September 2019 ('directors' resolution') is that the directors who were present at the board of directors' meeting on 4 September 2019, had resolved that the company has no claim over any interest in the land.

[46] Can the directors of the company pass a resolution on behalf of the company stating that it does not have any claim over any interest in its only asset under the Companies Act 2016? Learned counsel for the plaintiff, Mr CM Loo, submits 'yes'. Whereas, learned counsel for the defendant submits 'no'. Mr Loo submits that the directors resolution is neither an acquisition nor a disposal of a substantial portion of the company's undertaking. He cites as authority the case of *Tengku Dato' Ibrahim Petra bin Tengku Indra Petra v Petra Perdana Bhd and another appeal* [2018] 2 MLJ 177, where the Federal Court held that shareholders in a general meeting cannot control the powers of management conferred by the articles of association on a board of directors. Mr Loo in para 6(f) of the plaintiff's further written submission, states,

(f) The Board has acted in the best interest of the company, and this court should not second guess the merits of a commercial or business judgment made by directors or to interfere with business decisions as long as the directors acted bona fide

[47] Mr Loo goes on to submit in para 7 of his written submissions 'The plaintiff reiterate again [sic] that this court cannot ignore the board resolution'.

[48] Section 223 of the Companies Act 2016 ('the CA 2016') states as follows:

223 *Approval of company required for disposal by directors of company's undertaking or property*

(1) *Notwithstanding anything in the constitution, the directors shall not enter or carry*

into effect any arrangement or transaction for:

(a) the acquisition of an undertaking or property of a substantial value; or

(b) *the disposal of a substantial portion of the company's undertaking or property*;

unless:

(A) *the entering into the arrangement or transaction is made subject to the approval of the company by way of a resolution*; or

(B) *the carrying into effect of the arrangement or transaction has been approved by the company by way of a resolution*.

(2) For the purposes of subsection (1):

(a) the term 'undertaking or property' includes the whole or substantially the whole of the rights, including developmental rights, benefits or control in the undertaking or property;

(b) in the case of a company where all or any of its shares are quoted on a stock exchange, or its subsidiary, the term 'substantial value' or 'substantial portion' shall mean the same value prescribed in the listing requirements of the stock exchange where approval of the shareholders at a general meeting is required;

(c) in the case of an unlisted subsidiary whose holding company is a listed company, the directors of such holding company shall procure the shareholders' approval of the holding company in a general meeting for the arrangement or transaction by the unlisted subsidiary in addition to the shareholders' approval of the unlisted subsidiary in a general meeting procured by the directors of the unlisted subsidiary.

(3) *In the case of any company other than a company to which subsection (2) applies, an undertaking or property shall be considered to be of a substantial value and a portion of the company's undertaking or property shall be considered to be a substantial portion if*:

(a) *its value exceeds twenty-five per centum of the total assets of the company*;

(b) the net profits, after deducting all charges except taxation and excluding extraordinary items, attributed to it amounts to more than twenty-five per centum of the total net profit of the company; or

(c) its value exceeds twenty-five per centum of the issued share capital of the company, whichever is the highest.

(4) The Court may, on the application of any member of the company, restrain the directors from entering into or carrying into effect an arrangement or transaction which is in contravention of subsection (1).

(5) An arrangement or transaction which is in contravention of subsection (1) shall be void except in favour of any person dealing with the company for valuable consideration and without actual notice of the contravention.

(6) This section shall not apply to proposals for disposing of the whole or substantially the whole of the company's undertaking or property made by a receiver or receiver and manager of any part of the undertaking or property of the company

A appointed under a power contained in any instrument or by a Court or a liquidator of a company appointed in a voluntary winding up.

(7) *Any director who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both*. (Emphasis added.)

B

[49] The company is a private limited company: it is neither listed on the stock exchange nor is it an unlisted subsidiary of a listed company. Hence, sub-s 223(3) of the CA 2016 applies to the company, where, 'an undertaking or property shall be considered to be of a substantial value and a portion of the company's undertaking or property shall be considered to be a substantial portion if, (a) its value exceeds 25 per centum of the total assets of the company'.

C

D **[50]** It is not disputed that the land is the company's only immovable asset and that its value exceeds 25% of the total assets of the company. It also cannot be disputed that the High Court in three separate cases (the 1997 Suit, the 2013 OS and the 09 of 2019 OS) have found that the three brothers hold the land on trust for the company. Accordingly, pursuant to s 223 of the CA 2016, the land is considered to be of a substantial value and a portion of the company's undertaking or property. Therefore, any disposal by the company of its interest in the land has to be approved by the shareholders of the company in a general meeting.

E

F **[51]** The minutes of the directors' meeting of 4 September 2019 show that the meeting was chaired by Chong Tong Haw, who is the plaintiff in this case and was the plaintiff in the 2013 OS. If the registered owners of the land, of which the plaintiff is one (in his capacity as administrator of his father's estate), pursuant to the directors' resolution, subsequently disposes their 1/4 share in the land to a third party, pursuant to sub-s 223(5) of the CA 2016, such disposal is void except in favour of any person dealing with the company for valuable consideration and without actual notice of the contravention.

G

H **[52]** For these reasons, I find based on the evidence before this court and the findings of the High Court in the 1997 Suit, the 2013 OS and the 07 of 2019 OS, that the company is beneficially entitled to a claim under a trust with the three brothers affecting the land and a registrable interest in the land.

I **[53]** Accordingly, this court finds that the company has a caveatable interest in the land.

Whether there is a serious issue to be tried?

[54] The position taken by the plaintiff is that the private caveat on the land should be removed because his late father, CKK, is the registered owner of an undivided 1/4 share of the said land. Also, that by CKK's last will and testament made on 14 July 2004, he had bequeathed equal shares in his 1/4 share of the said land to his three sons. However, the plaintiff did not mention in his affidavit in support that the High Court had in the 1997 Suit held that his late father, CKK held his 1/4 share in the land as trustee for the company. He also did not mention in his affidavit that CKK together with CKS had in the 2017 suit affirmed an affidavit stating that the four brothers held the land as trustees and that the company had paid for the land. Additionally, the plaintiff kept silent about his earlier application in the 2013 OS, where this court held that the registered co-proprietors of the land were holding the land on trust for the company.

[55] On the other hand, the plaintiff had averred that the Court of Appeal's decision of 2 April 2014 clearly shows that CKK and the other three individuals are the valid registered owners of the land. From reading the Court of Appeal's order of 2 April 2014 (reproduced above), it is clear that the plaintiff's averment does not reflect what was stated by the Court of Appeal in the order. Whether the plaintiff deliberately or wilfully told an untruth in court in his affidavit or he was wrongly advised by the lawyers as to meaning of the Court of Appeal's order of 2 April 2014 is a matter that should be tried and the plaintiff should be given the opportunity to explain himself since telling an untruth under oath in court amounts to perjury.

[56] A question to be determined at trial is whether the directors' resolution has the effect of the company relinquishing its claim to the title and registrable interest in the land? Related to this question, is another question of whether, as submitted by learned counsel for the plaintiff, the passing of the directors' resolution that the company has no claim over any interest in the land was a decision pertaining to the business or management of the company. Or was it a mala fide attempt by the directors to circumvent the express provisions of the CA 2016, which is in pari materia with the same provision in the earlier Companies Act 1965, enacted by Parliament to protect the company and the shareholders of the company from the disposal of a substantial portion of the company's property by its directors without the shareholders' knowledge and approval.

[57] For these reasons, I find that there are serious issues and questions that ought to be decided at trial.

Where does the balance of convenience lie?

[58] The Federal Court in *Kho Ah Soon v Duniaga Sdn Bhd* [1996] 2 MLJ

181 held that where there are serious questions for trial, then the civil suit for the determination of these issues ought to be allowed to heard 'without it being rendered futile by the removal of the private caveat in question. The private caveat ought to remain until the disposal of the said civil suit for maintaining the status quo' per Peh Swee Chin FCJ.

[59] As can be seen, there have been many suits and originating summonses instituted in this court since 1997 relating to the ownership of the land. There is no endorsement on the issue document of title of the land that the three brothers held there 1/4 shares on the land on trust for the company. In the 07 of 2019 OS, Chang Yook Seen as the administrator of the estate of CKS, had sought to remove this same private caveat entered on the land by the defendant. As stated above, my predecessor Che Mohd Ruzima bin Ghazali J (as he then was), had dismissed Chang Yook Seen's application.

[60] The land is the only immovable asset of the company and its wood processing plant, factory and machineries are all located on the said land. This court had found in the 2000/2005 suit that one of the brothers, CKY, is holding his 1/4 share in the land for his own legal and beneficial interest and not on trust for the company. CKY in the 09 of 2019 OS had also sought to remove the same private caveat from the land.

[61] From the numerous suits and applications over the years in respect of the land and the fact that CKY, Chang Yook Seen and the plaintiff had all filed three separate applications in July, September and October 2019 in this court to remove this very same private caveat on the land, it is highly probable that if the private caveat is removed, CKY and/or one of the administrators of the estates of the other three brothers, will sell their 1/4 share in the land to third parties. I agree with Che Mohd Ruzima bin Ghazali J (as he then was) that the caveat on the land should be maintained until the dispute relating to the ownership of the land between the company and the registered owners of the land is resolved.

[62] The defendant and his wife, who is also another director and shareholder of the company, have filed a civil suit against in Guaman No BA-22NCVC-22–01 of 2020 ('2020 Suit') against the company, the administrators of the estates of the three brothers and two other directors of the company seeking, inter alia, for a declaration that 3/4 share of the land registered in the names of the three brothers is owned by the company; for an order for steps to be taken to change the name of the owners of the land to the company's name; and that the land is sold by the company and the proceeds of sale, after payment of all liabilities, is divided among the shareholders of the company.

[63] For these reasons, I find that the balance of convenience lies in the private caveat remaining on the land until the disposal of the 2020 Suit.

DECISION

[64] For the reasons above, the plaintiff's application in encl 1 to remove the private caveat on the land is dismissed.

[65] The plaintiff is ordered to pay the defendant cost in the sum of RM2,500 subject to the payment of the allocatur fee.

The plaintiff's application is dismissed with cost in the sum of RM2,500 subject to the payment of the allocatur fee.

Reported by Nuzul Fitrie